ANNUAL REPORT ON THE USE OF ELECTRONIC SURVEILLANCE 2012

Annual report on the use of electronic surveillance
2012
Table of contents

	Page
Section I – Introduction	1
Section II – Overview of Part VI of the *Criminal Code*	3
Section III – Statistics	5
Applications for authorizations and renewals	5
Period for which authorizations and renewals were granted	7
Offences specified in authorizations	8
Classes of places and methods of interception	12
Legal proceedings, use of intercepted material and disposition	13
Notifications	18
Prosecutions for unlawful interceptions and unlawful disclosure	19
Section IV – General assessment	20
Investigation	20
Detection	20
Prevention	20
Prosecution	20
Appendices	
A – Designated agents who made applications in accordance with subsections 185(1) and 487.01(1) of the *Criminal Code*	21
B – Designated peace officers who made applications in accordance with subsections 188(1) and 487.01(1) of the *Criminal Code*	22

Part VI of the *Criminal Code* (*C.C.*) sets out procedures for the law enforcement community to obtain judicial authorization to conduct electronic surveillance of private communications for criminal investigations. These procedures are to be carried out in such a way so as to ensure that the privacy of individuals is respected as much as possible during the surveillance.

As a measure of accountability, section 195 of the *Criminal Code* requires the Minister of Public Safety and Emergency Preparedness to prepare and present to Parliament an annual report on the use of electronic surveillance under Part VI for offences that may be prosecuted by or on behalf of the Attorney General of Canada. In particular, the annual report must include the following information:

- the number of applications made for authorizations, or for renewal of authorizations;
- the number of applications granted with or without terms and conditions, as well as the number of applications that were refused;
- the number of persons identified in an authorization who were charged for various offences;
- the number of persons not identified in an authorization, but who were arrested or charged for various offences because they became known to peace officers[1] as a result of authorized surveillance;
- the average time for which authorizations were issued and for which renewals were granted;
- the number of authorizations valid for more than 60, 120, 180 and 240 days;
- the number of notifications given to people who had private communications intercepted;
- the types of offences for which authorizations were granted;
- a description of the classes of places set out in authorizations, and the number of authorizations granted for each class of place;
- a general description of the methods of interception used;
- the number of proceedings in which intercepted communications were entered as evidence; and
- the number of investigations in which information from intercepted communications was used but the communication itself was not entered as evidence.

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[1] A "peace officer" is defined in section 2 of the *Criminal Code* and includes police officers.

The 2012 Annual Report covers a five-year period from 2008 to 2012. The Report includes new statistics for the period from January 1, 2012 to December 31, 2012, and updates the figures for the years 2008 to 2011.

The 2012 Annual Report is organized in the following manner:

- **Section II** provides an overview of the procedures and processes set out in Part VI of the *Criminal Code*. Information on section 487.01 of the *Criminal Code* is also provided since the law enforcement community can obtain the authority to conduct video surveillance by applying for a general warrant pursuant to this section.
- **Section III** presents the statistical information that must be included in each annual report pursuant to subsections 195(2) and 195(3) of the *Criminal Code*.
- **Section IV** provides a general assessment of the importance of electronic surveillance for the investigation, detection, prevention, and prosecution of offences as required by paragraph 195(3)(*b*) of the *Criminal Code*.
- **Appendix A** provides a list of agents designated by the Minister or Deputy Minister of Public Safety and Emergency Preparedness who made an application for an authorization under sections 185 and/or 487.01 of the *Criminal Code*.
- **Appendix B** lists peace officers designated by the Minister of Public Safety and Emergency Preparedness who made an application for an authorization under sections 188 and/or 487.01 of the *Criminal Code*.

As indicated in Section I, Part VI of the *Criminal Code* sets out procedures for the law enforcement community to obtain judicial authorization to conduct electronic surveillance for criminal investigations.

Designated peace officers and agents can only obtain this authorization to intercept private communications for certain offences, which are listed in section 183 of the *Criminal Code*. These offences include serious offences such as facilitating terrorist activity, weapons trafficking, child pornography, child abductions, drug trafficking, and organized crime offences.

Part VI also sets out the requirements that must be met to apply for and obtain authorization to intercept private communications. These requirements include the following:

- With regard to offences that may be prosecuted by or on behalf of the Attorney General of Canada, only the Minister of Public Safety and Emergency Preparedness, or persons specially designated by the Minister or the Deputy Minister of Public Safety and Emergency Preparedness, may make an application for an authorization.
- An application for an authorization must be accompanied by an affidavit sworn by a peace officer or public officer. The affidavit must include information such as the facts relied on to justify the need for an authorization, details about the offence, and the names and addresses of the persons whose private communications would be intercepted (section 185).
- Before an authorization is issued, the judge hearing the application must be satisfied that it would be in the best interests of the administration of justice to authorize the electronic surveillance. Except in the case of certain specific offences, such as a terrorism offence, the judge must also be satisfied that other investigative procedures have been tried and have failed, that other investigative procedures are unlikely to succeed, or that there is an urgency such that other investigative procedures are impractical. The judge may impose terms and conditions on the authorization, including conditions to ensure that the privacy of individuals is respected as much as possible during the surveillance (section 186).

Generally, authorizations are not issued for a period of time longer than 60 days (paragraph 186(4)(*e*)). Designated persons may apply to a judge to have the authorization renewed, which extends the period of time during which they can lawfully conduct electronic surveillance. Before the judge may renew the authorization, he or she must be satisfied that the same circumstances that applied to the original application for authorization still apply (subsections 186(6) and 186(7)).

Provisions also permit designated persons to obtain judicial authorization to intercept private communications in emergency situations. Under section 188 of the *Criminal Code*, a peace officer designated by the Minister of Public Safety and Emergency Preparedness may apply to a judge for an authorization if the urgency of the situation requires interception of private communications, but there is not enough time to use the regular application process to obtain an authorization. An authorization considered in these circumstances may be issued for a period of up to thirty-six hours, and the judge may impose terms and conditions.

In addition to applying for an authorization to intercept private communications under Part VI, peace officers and agents may apply to a judge for a general warrant under section 487.01 of the *Criminal Code*. This section enables the issuance of a warrant for the use of any device or investigative technique that is not contemplated elsewhere in the *Criminal Code* or any other Act of Parliament. For example, this type of warrant would allow peace officers to carry out video surveillance of a person in circumstances where the person has a reasonable expectation of privacy. As with other judicial authorizations, certain requirements must be met before a warrant can be issued. In the case of warrants issued pursuant to section 487.01, these requirements include the following:

- The judge must be satisfied by information provided under oath and in writing (i.e., a sworn affidavit) that there are reasonable grounds to believe that an offence has been or will be committed and that information about the offence will be obtained by conducting video surveillance.
- The judge must be satisfied that it is in the best interests of the administration of justice to issue the warrant.
- There must be no other provision in the *Criminal Code* or any other Act of Parliament that would provide for a warrant, authorization or order to allow the intended video surveillance to be carried out.
- The judge may also impose terms or conditions on the warrant, including conditions to ensure that the privacy of individuals is respected as much as possible during the surveillance.

Applications for authorizations and renewals

Paragraphs 195(2)(*a*) and (*b*) of the *Criminal Code* require statistics relating to:

(*a*) the number of applications made for authorizations; and

(*b*) the number of applications made for renewal of authorizations.

Table 1

Type of application made		Number of applications				
		2008	2009	2010	2011	2012
Audio	s. 185 *C.C.*	85	93	71	82	68
Video	s. 487.01 *C.C.*	11	29	31	41	27
Renewals	s. 186 *C.C.*	16	10	9	13	0
Emergency audio	s. 188 *C.C.*	2	1	0	0	0
Emergency video	s. 487.01 *C.C.*	0	0	0	0	0
Total		**114**	**133**	**111**	**136**	**95**

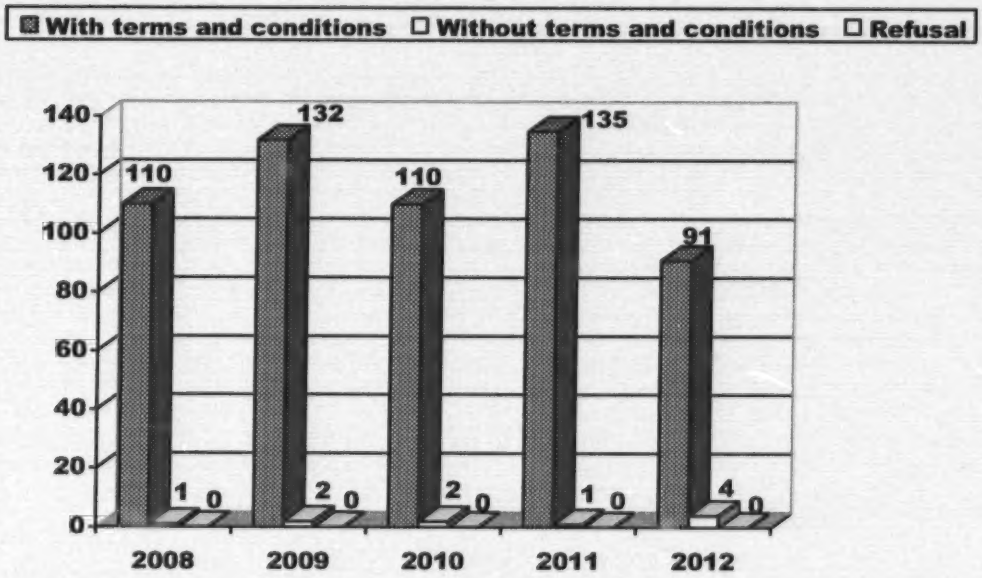
Table 1 presents the number of applications made for audio and video authorizations and renewals each year for the five-year period from 2008 to 2012. The data is categorized by the three types of applications for which authorizations may be granted: audio and video applications (maximum duration sixty days) and renewals thereof pursuant to subsections 185(1) and 186(6) and section 487.01 of the *Criminal Code*, as well as emergency applications (maximum duration 36 hours) pursuant to subsection 188(1) and section 487.01 of the *Criminal Code*.

* It should be noted that the numbers reported in this section will likely increase in future years to reflect updated statistics from Canadian police forces.

Paragraph 195(2)(*c*) of the *Criminal Code* requires information relating to:

(*c*) the number of applications referred to in paragraphs (*a*) and (*b*) that were granted, the number of those applications that were refused and the number of applications referred to in paragraph (*a*) that were granted subject to terms and conditions.

Figure 1



Period for which authorizations and renewals were granted

Paragraph 195(2)(*f*) of the *Criminal Code* requires information relating to:

(*f*) the average period for which authorizations were given and for which renewals thereof were granted.

Table 2

Type of authorization		Average period of time valid				
		2008	2009	2010	2011	2012
Audio	s. 185 *C.C.* (days)	59.3	57.2	71.8	64.7	75.5
Video	s. 487.01 *C.C.* (days)	50.9	53.1	81.5	78.4	96.9
Emergency audio	s. 188 *C.C.* (hours)	72	36.0	0	0	0
Emergency video	s. 487.01 *C.C.* (hours)	0	0	0	0	0

Calculations for the "average period of time valid" include authorizations and renewals where applicable. Further, it is important to note that although authorizations originally granted or renewed may be valid for a period of up to sixty days; this does not necessarily mean interceptions are made during the entire period. For example, sufficient evidence may be obtained as a result of the authorization to prove the offence and to lay charges prior to the expiration of the authorization. It is also important to note that some authorizations investigating organized crime may be valid for up to one year, which increases the authorizations' overall average period of time valid.

Paragraph 195(2)(*g*) of the *Criminal Code* requires information relating to:

(*g*) the number of authorizations that, by virtue of one or more renewals thereof, were valid for more than sixty days, for more than one hundred and twenty days, for more than one hundred and eighty days and for more than two hundred and forty days.

Table 3

Renewal period (days)	Number of authorizations renewed				
	2008	2009	2010	2011	2012
61-120	11	7	6	8	0
121-180	1	2	3	1	0
181-240	1	1	0	2	0
241 or more	1	0	0	1	0
Total renewals	**14**	**10**	**9**	**12**	**0**

The categories in Table 3 are mutually exclusive. For example, an authorization valid for a period of sixty days which was renewed for a further sixty days is counted in the category 61-120 days, and an authorization of sixty days coupled with three sixty-day renewals would be counted in the 181-240 category.

Offences specified in authorizations

Paragraph 195(2)(*i*) of the *Criminal Code* requires information relating to:

(*i*) the offences in respect of which authorizations were given, specifying the number of authorizations given in respect of each of those offences.

Table 4

Statute	Type of offence	Number of Authorizations				
		2008	2009	2010	2011	2012
Controlled Drugs and Substances Act	Possession of Substance s. 4	2	0	0	0	0
	Trafficking ss. 5(1)	76	107	66	83	50
	Possession of a narcotic for the purpose of trafficking ss. 5(2)	71	84	69	90	49
	Importing and exporting ss. 6(1)	37	41	46	62	25
	Possession for the purpose of exporting ss. 6(2)	2	6	1	0	0
	Production s. 7	13	34	20	22	11
Export and Import Permits Act	Export or attempt to export s.13	0	0	0	0	1
Customs Act	False statements s.153	0	1	0	8	1
	Smuggling/attempt to smuggle goods into Canada s. 159	0	1	0	14	0
Excise Act	Unlawful possession or sale of improperly packaged tobacco s.32	0	0	0	1	0
	Unlawful production, sale, etc. of tobacco or alcohol s.214	0	0	0	4	0
	Unlawful possession of tobacco product s. 216	2	1	0	9	2
	Falsifying or destroying records s.219	0	0	0	8	0
	Possession of property obtained by excise offenses s. 230	0	1	0	0	0
Immigration and Refugee Protection Act	Organizing entry into Canada s. 117	0	1	0	0	0
	Offences related to documents s. 122	0	1	0	0	0
	Counselling misrepresentation s. 126	0	1	0	0	0
	Forgery of passport s. 57	0	1	0	0	0
Criminal Code	Using explosives s. 81	1	0	0	0	0
	Providing or collecting property for certain activities s. 83.02	3	0	8	0	4
	Providing, making available, etc. property or services for terrorist activities s. 83.03	3	0	2	0	0

Table 4 (*Continued*)

Statute	Type of offence	Number of authorizations				
		2008	2009	2010	2011	2012
Criminal Code	Using or possessing property for terrorist purposes s. 83.04	3	0	0	1	0
	Participation in the activity of a terrorist group s. 83.18	3	0	18	1	21
	Facilitating terrorist activities s. 83.19	3	2	18	1	4
	Commission of an offense for a terrorist group s. 83.2	0	0	20	0	22
	Instructing to carry out activity for a terrorist group s. 83.21	3	0	1	0	0
	Instructing to carry out terrorist activity s. 83.22	3	0	0	0	0
	Possession of a prohibited weapon s. 90	0	1	0	0	0
	Unauthorized possession of a firearm s. 91	0	0	1	0	0
	Importing or exporting of prohibited weapons s. 95	1	2	0	0	0
	Possession of weapons obtained by commission of offence s. 96	2	2	1	0	0
	Weapons trafficking s. 99	4	4	5	3	2
	Possession for the purpose of weapons smuggling s. 100	1	1	4	2	0
	Importing or exporting (knowing it is unauthorized) s. 103	0	0	0	2	0
	Unauthorized importing or exporting s. 104	0	0	5	2	0
	Bribery s. 120	2	0	4	4	2
	Breach of trust s. 122	5	0	2	0	1
	Obstructing justice s. 139	4	1	0	6	2
	Keeping gaming or betting house s.201	0	0	2	6	3
	Betting, pool-selling, book-making, etc. s. 202	0	4	5	2	7
	Murder s. 235	12	10	9	5	0
	Manslaughter s. 236	0	0	1	0	0
	Attempted murder s. 239	2	0	7	0	0
	Accessory after the fact s. 240	0	1	6	4	2
	Dangerous operation of Motor Vehicles, Vessels and Aircraft causing bodily harm ss. 249(3)	1	0	0	0	0

Table 4 (*Continued*)

Statute	Type of offence	Number of authorizations				
		2008	2009	2010	2011	2012
Criminal Code	Dangerous operation of Motor Vehicles, Vessels and Aircraft causing death ss. 249(4)	1	0	0	0	0
	Uttering death threats s. 264.1	1	0	0	0	0
	Assault with a weapon or causing bodily harm s. 267	3	2	2	0	0
	Aggravated assault s. 268	8	4	3	1	0
	Kidnapping s. 279	2	0	0	0	0
	Hostage Taking s.279.1	1	0	0	0	0
	Abduction in contravention of custody order s. 282	0	1	0	0	0
	Theft s. 334	2	2	0	0	0
	Theft, forgery, etc., of credit card s. 342	1	1	4	0	0
	Unauthorized use of a computer s. 342.1	0	0	4	0	0
	Robbery s. 344	4	1	1	7	0
	Extortion s. 346	1	1	0	8	0
	Criminal interest rate s. 347	0	1	1	0	0
	Break and enter s. 348	1	0	0	0	0
	Possession of property obtained by crime s. 354	50	68	43	76	33
	Possession of property obtained by the commission of an offence s. 355	8	4	3	2	5
	Fraud s. 380	2	9	1	0	2
	Fraudulent manipulation of stock exchange transactions s. 382	0	1	0	0	0
	Arson – disregard for human life s. 433	1	0	0	0	0
	Arson – damage to property s. 434	0	0	0	0	2
	Laundering proceeds of counterfeit money s. 462.31	30	46	20	49	29
	Attempts, accessories s. 463	16	37	27	45	11
	Counselling s. 464	17	33	25	48	15
	Conspiracy s. 465	95	109	77	113	61

Table 4 (*Continued*)

Statute	Type of offence	Number of authorizations				
		2008	2009	2010	2011	2012
Criminal Code	Participating in activities of a criminal organization s. 467.11	16	7	25	31	14
	Commission of an offence for a criminal organization s. 467.12	14	9	26	27	19
	Instructing commission of an offence for a criminal organization s. 467.13	11	5	10	15	8
Security of Information Act	Communicating safeguarded information s. 16	0	0	0	2	0
	Breach of trust with respect of safeguarded information s. 18	0	0	0	2	0
	Use of trade secret for the benefit of foreign economic entity s. 19	0	0	0	0	1
	Preparatory acts s. 22	0	0	0	2	0
	Conspiracy, attempts, etc. s. 23	0	0	0	2	0

Most authorizations granted to agents by the Minister of Public Safety and Emergency Preparedness provide for the use of electronic surveillance in relation to more than one offence. A typical example of such an authorization would be in relation to sections 5 (trafficking), 6 (importing and exporting), and 7 (production) of the *Controlled Drugs and Substances Act* and conspiracy under section 465 of the *Criminal Code* to commit these offences. Table 4 represents the number of times specific offences were identified in authorizations granted to agents of the Minister of Public Safety and Emergency Preparedness. For example, of the 95 authorizations granted in 2012, 50 of these authorizations specifically provided for the use of electronic surveillance in connection with trafficking a narcotic, 49 for possession for the purpose of trafficking and 25 for importing and exporting.

Classes of places and methods of interception

Paragraph 195(2)(*j*) of the *Criminal Code* requires information relating to:

(*j*) a description of all classes of places specified in authorizations and the number of authorizations in which each of those classes of places was specified.

Table 5

Class of place	Number of authorizations				
	2008	2009	2010	2011	2012
Residence (permanent)	61	71	41	39	25
Residence (temporary)	8	9	5	5	4
Commercial Premises	22	21	18	13	11
Vehicles	37	23	23	17	11
Other	44	53	26	34	23

Paragraph 195(2)(*k*) of the *Criminal Code* requires information relating to:

(*k*) a general description of the methods of interception involved in each interception under an authorization.

Table 6

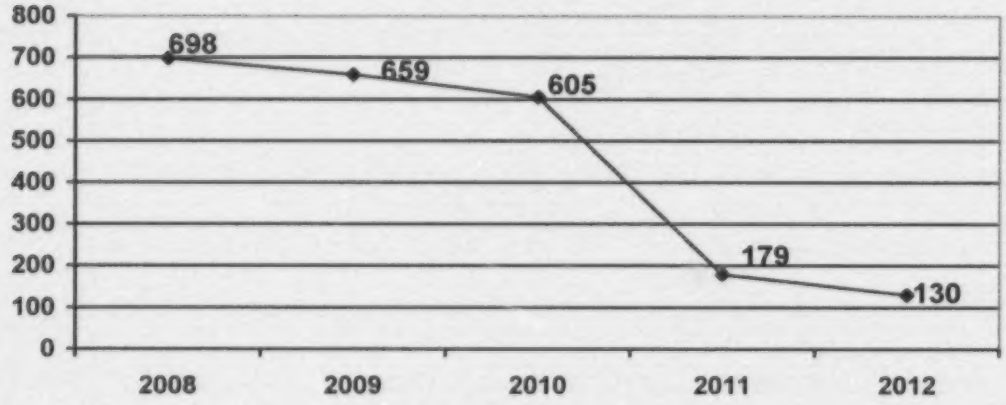
Method of interception	Number of interceptions				
	2008	2009	2010	2011	2012
Telecommunication	843	938	572	822	398
Microphone	115	113	69	69	38
Video	25	33	21	34	4
Other	103	147	222	41	21
Total	**1086**	**1231**	**884**	**966**	**461**

Legal proceedings, use of intercepted material and disposition

Paragraph 195(2)(*l*) of the *Criminal Code* requires information relating to:

(*l*) the number of persons arrested whose identity became known to a peace officer as a result of an interception under an authorization.

Figure 2



Paragraph 195(2)(*d*) of the *Criminal Code* requires information relating to:

(*d*) the number of persons identified in an authorization against whom proceedings were commenced at the instance of the Attorney General of Canada in respect of:

(i) an offence specified in the authorization;

(ii) an offence other than an offence specified in the authorization but in respect of which an authorization may be given; and

(iii) an offence in respect of which an authorization may not be given.

Table 7

Category of offence	Number of persons against whom proceedings were commenced (identified in authorization)				
	2008	2009	2010	2011	2012
Offence specified in authorization	349	328	306	257	98
Offence for which an authorization may be given but not specified in the authorization	122	171	44	49	31
Offence for which no authorization may be given	71	104	16	13	7

Paragraph 195(2)(*e*) of the *Criminal Code* requires information relating to:

(*e*) the number of persons not identified in an authorization against whom proceedings were commenced at the instance of the Attorney General of Canada in respect of:

(i) an offence specified in such an authorization;

(ii) an offence other than an offence specified in such an authorization but in respect of which an authorization may be given;

(iii) an offence other than an offence specified in such an authorization and for which no such authorization may be given; and

whose commission or alleged commission of the offence became known to a peace officer as a result of an interception of a private communication under an authorization.

Table 8

Category of offence	Number of persons against whom proceedings were commenced (not identified in authorization)				
	2008	2009	2010	2011	2012
Offence specified in authorization	154	235	215	121	80
Offence for which an authorization may be given but not specified in the authorization	64	49	103	17	14
Offence for which no authorization may be given	60	84	73	4	8

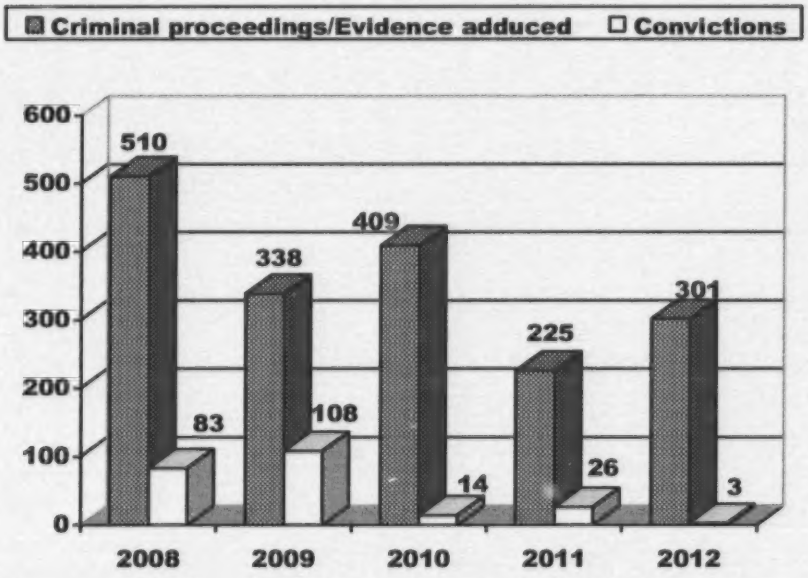
Tables 7 and 8 contain information relating to the number of persons charged for all types of offences, including *Criminal Code* offences. Moreover, the three categories of offences are not treated as being mutually exclusive, and persons charged with more than one category of offence are counted more than once. Therefore, one cannot add the columns in Tables 7 and 8 to obtain the total number of persons.

Tables 7 and 8 are interrelated. Table 7 provides information on the number of persons identified in an authorization who were charged with specific categories of offences, i.e., an offence specified in the authorization, an offence other than an offence specified in such an authorization but in respect to which an authorization may be given, or an offence other than an offence specified in such an authorization and for which no such authorization may be given. Table 8 provides similar information on persons not identified in an authorization, but who were charged as a result of information from the authorized interception.

Paragraph 195(2)(*m*) of the *Criminal Code* requires information relating to:

(*m*) the number of criminal proceedings commenced at the instance of the Attorney General of Canada in which private communications obtained by interception under an authorization were adduced in evidence and the number of those proceedings that resulted in a conviction.

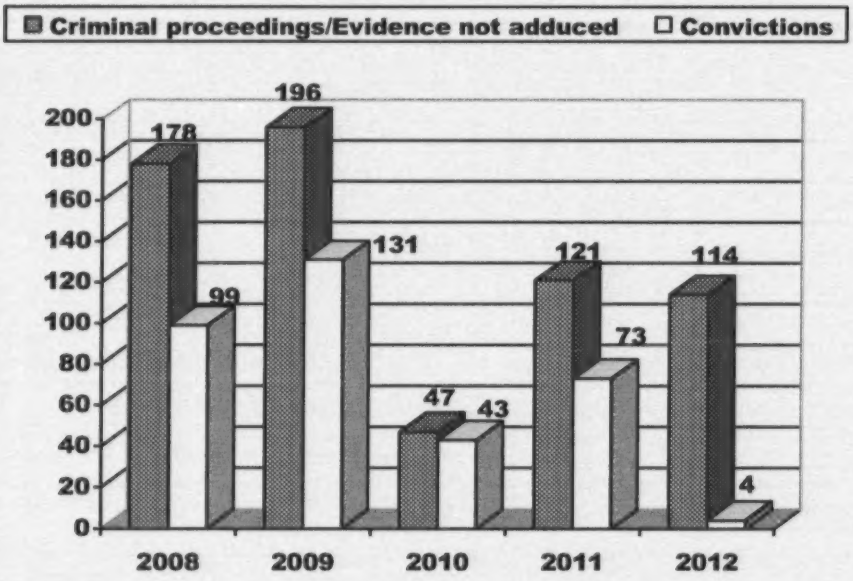
Figure 3



Paragraph 195(2)(*n*) of the *Criminal Code* requires information relating to:

(*n*) the number of criminal investigations in which information obtained as a result of the interception of a private communication under an authorization was used although the private communication was not adduced in evidence in criminal proceedings commenced at the instance of the Attorney General of Canada as a result of the investigations.

Figure 4

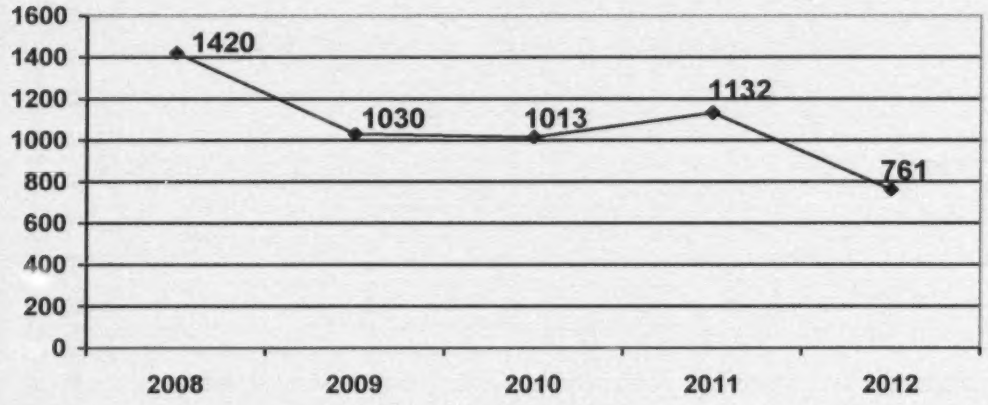


Notifications

Pursuant to subsection 196(1) of the *Criminal Code*, the Minister of Public Safety and Emergency Preparedness is required to notify in writing the person who was the object of the interception. Furthermore, paragraph 195(2)(*h*) requires that the Annual Report of the Minister of Public Safety and Emergency Preparedness provide:

(*h*) the number of notifications given pursuant to section 196.

Figure 5



Notice is served on those persons whose communications were intercepted, and who were identified in the authorization, either by name, or unnamed but known (e.g., the unidentified female living with John Doe). In cases where the person was identified but unnamed in the authorization, notification is to be served on such persons where sufficient information is acquired to effect notification. As well, notification may be delayed by a judge for up to three years if the investigation is continuing, is in relation to a terrorism offence or an offence associated with a criminal organization, and the judge is of the opinion that the extension would be in the interest of justice.

Prosecutions for unlawful interceptions and unlawful disclosure

Paragraph 195(3)(*a*) of the *Criminal Code* requires that the Annual Report provide information relating to:

(*a*) the number of prosecutions commenced against officers or servants of Her Majesty in right of Canada or members of the Canadian Forces for offences under section 184 or section 193.

No such prosecutions have been initiated for the period of 2008 to 2012.

Subsection 184(1) of the *Criminal Code*, with a number of specific exceptions, makes it an offence for a person to wilfully intercept a private communication by means of an electromagnetic, acoustic, mechanical or other device. Subsection 193(1), with similar specific exceptions, makes it an offence to disclose private communications that are lawfully intercepted, or to disclose the existence of such intercepted communications.

Paragraph 195(3)(*b*) of the *Criminal Code* requires that the Annual Report provide:

(*b*) a general assessment of the importance of interception of private communications for the investigation, detection, prevention and prosecution of offences in Canada.

Investigation

The lawful interception of private communications is a vital tool used by law enforcement agencies. It is of great assistance to complex criminal investigations involving threats to national security and serious crimes. The statistics presented in Section III of this report indicate that the majority of authorizations issued are in relation to the offence of trafficking in a controlled substance.

Detection

The illegal activities of organized criminal groups and terrorist activity, just to name a few, would remain largely undetected were it not for the active investigation of the police. Offences such as money laundering, smuggling, drug trafficking or participation in the activity of a terrorist group, present serious threats to the safety and stability of Canadian communities, and the lawful interception of private communications provides a means for the police to investigate the commission of such offences.

Prevention

The use of electronic surveillance in investigations has led to numerous drug seizures, leading to a reduction in the amount of illicit drugs and crime associated with their abuse. Without this crucial tool, the ability of the law enforcement community to prevent crimes and ensuing social harm would be seriously hindered.

Prosecution

Investigations of the activities of organized crime groups are increasingly complex and sometimes criminal charges are difficult to prove in a court of law. The use of electronic surveillance often provides strong evidence against those accused of being involved in illegal activities, increasing the likelihood of conviction. The prosecution of such offenders increases public confidence in the criminal justice system and contributes to public safety by holding such persons responsible for their actions.

Paragraph 195(1)(a) of the *Criminal Code* requires information relating to "authorizations for which he and agents to be named in the report who were specially designated in writing by him for the purposes of section 185 made application".

Designated agents who made applications in accordance with subsections 185(1) and 487.01(1) of the *Criminal Code* in 2012 were:

F. Alibhai
R. Benoit
F. Blanchette
B. Boyd
C. Braid
C. Bundy
M. Cullen
D. Curliss
M. Devlin
M.E. Doody
E. Frocess
E. Froess
A. Gauthier
B. Gluckman
I. Jaffe
P. Lapointe
C. Mainella
M. Marcotte
J. Martin
W. McBride
M. McQueen
M.-M. Meloche
A. Piche
L. Proulx
K. Reitsma
B. Reitz
P. Roy
R. Roy
D. Schermbrucker
F. Simon
A. Weiler

Paragraph 195(1)(b) of the *Criminal Code* requires information relating to "authorizations given under section 188 for which peace officers to be named in the report who were specially designated by him for the purposes of that section made application".

No designated Peace Officers made applications in accordance with subsections 188(1) and 487.01(1) of the *Criminal Code* in 2012.